

Divorce

Forward

The increase in divorce has its effect, directly or indirectly, on virtually every family in the country. The following information is designed to summarize briefly Georgia's Divorce Laws.

Marriage is a civil contract which the State has an interest in preserving. Accordingly, the marriage relationship can be dissolved only as provided by law, by either a divorce or an annulment. It also may be altered by a decree of separation granted by our Courts. In any case, there must be a proceeding in the Superior Court of the County in which the person seeking the divorce, separation decree or annulment must prove "grounds" or valid reasons prescribed by law.

1. What are the grounds for divorce in Georgia?

In Georgia there are thirteen grounds for divorce. One ground is "irretrievably broken" (sometimes referred to as the "no-fault" ground). The other twelve grounds for divorce in Georgia are "fault" grounds.

2. What is a "no-fault" divorce?

To obtain a divorce on this basis (irretrievably broken), one party must establish that he or she refuses to live with the other spouse and that there is no hope of reconciliation. It is not necessary to show that there was any fault or wrongdoing by either party.

3. What are the "fault" grounds?

To obtain a divorce on one of the twelve "fault" grounds, one must prove that there was some wrongdoing by one of the parties to the marriage. As an example, one fault ground is adultery. Adultery in Georgia includes heterosexual and homosexual relations between one spouse and another individual.

Another "fault" ground for divorce in Georgia is desertion. A divorce may be granted on the grounds that a person has deserted his or her spouse willfully for at least a year. Other "fault" grounds include mental or physical cruel treatment, marriage between persons who are too closely related, mental incapacity at the time of marriage, impotency at the time of marriage, force or fraud in obtaining the marriage, pregnancy of the wife unknown to the husband at the time of the marriage, conviction and imprisonment for certain crimes, habitual intoxication or drug addiction, and mental illness.

4. Is there a residence requirement for getting a divorce in Georgia?

Yes, one spouse must have lived in the State of Georgia for 6 months or Georgia must have been the last domicile of the marriage.

5. Must the husband and wife live apart when a divorce complaint is filed?

No, but the spouses must be considered separated in a legal sense before one can file for a divorce. Spouses may be considered separated even if they are living in the same house if they are not sharing the same room and/or not having a sexual relationship.

6. How does one "file for a divorce?"

The person seeking the divorce (the Plaintiff) will file a document called a "Complaint" with the appropriate Superior Court. This Complaint includes information on the marriage including present living arrangements, children of the marriage, assets and debts, and the specific reason claimed for seeking a divorce. A copy of the Complaint will be served on the other spouse (the Defendant) by the sheriff.

7. Where does one file for a divorce?

A Complaint for divorce should be filed in the Superior Court of the Defendant's county of residence or, if the Defendant has recently moved from the State of Georgia, in the county of the Plaintiff's residence. This would be considered the domicile of the marriage. Upon the Defendant's consent, the Complaint may be filed in the Plaintiff's county of residence regardless of whether the Defendant has moved from the state of Georgia or not.

8. What should I do if I receive a Complaint for divorce that my spouse has filed?

The spouse who receives the Complaint should promptly consult a lawyer. The spouse may contest the reason claimed for the divorce or contest the claims for child custody, child support, alimony, or property division by filing an Answer with the Court. If, however, an Answer is not filed within thirty (30) days, the right to contest the Complaint may be lost.

9. Is there a way to live apart without getting a divorce?

A party who wishes to live apart permanently but who does not want to get a divorce may file a "Separate Maintenance" action. The spouses will remain legally married although living apart. The Court may order that alimony will be paid by one spouse to the other, but will not divide the property accumulated during the marriage.

10. What is an annulment?

Unlike a divorce, which dissolves a valid marriage, an annulment is a legal decree that the marriage is now void and was invalid from its inception. If there are children born of the marriage, an annulment may not be granted, and the marriage may only be dissolved by divorce.

11. Must I go to court to get a divorce?

Not necessarily. Spouses may be able to reach an agreement resolving all issues arising from the marriage, including finances, division of property, and custody and visitation of children. The agreement is presented to the Court as a Settlement Agreement and, upon approval, made an order of the Court. The Court's order, called a Final Judgment and Decree, concludes the lawsuit. If however, the parties cannot reach an agreement, the issues will be resolved by the Judge or the jury. However, a judge always decides matters of child custody and visitation.

12. How long does it take to get a divorce?

If there is agreement between the parties, the divorce is considered uncontested. An uncontested divorce may be granted 31 days after the Defendant has been served with the Complaint for

Divorce. If there is disagreement as to any matter, the divorce will be obtained when the case reaches the Court, which can take many months.

13. What happens while I wait to go to trial?

Either of the spouses may request a temporary hearing. This hearing is not a final trial. A temporary hearing resolves the issues of child custody, visitation, child support, alimony, debts, and possession of property on a temporary basis until the final trial. The Judge will issue a temporary order that applies only until the time of the final trial. The temporary order may also prohibit one party from interfering with the other party or the children and prevent the transfer and selling of assets.

14. What is decided at final trial?

Questions of child custody and visitation are decided by the Judge. The Judge alone or a 12 person jury (if one of the parties has requested) will resolve all of the financial issues of the marriage, such as division of property, division of debts, alimony, and child support. At the final trial, both spouses present evidence by their own testimony and may call other witnesses. The decision rendered by a Judge or jury is written into a Court order that is binding upon both parties. The wife's maiden or former name can be re-established if she so desires.

15. What about the children?

The welfare of children is of major concern to the Court. Neither parent is automatically entitled to custody. The Judge looks at the best interests of the child in determining the proper parent to have custody. The Judge considers many factors when deciding custody. Those factors include the age and sex of the child, compatibility with each parent, and the ability of each parent to care for and nurture the child. A child over 14 years of age can choose which parent will have custody upon the consent of the Court. The Court considers it important for a child to maintain a relationship with both parents; therefore, visitation rights are awarded to the parent who is not given legal custody of the child.

16. May the parents share custody?

The Court in its discretion can award joint custody instead of sole custody. There are two types of joint custody. Joint legal custody means that both parents have equal rights and responsibilities for major decisions concerning the child; joint physical custody means that physical custody is shared by the parents in such a way to assure the child substantially equal time and contact with both parents. In awarding joint custody, the Court may order joint legal custody, joint physical custody, or both.

17. What are child support obligations?

In Georgia both parents are required to support their children until a child reaches the age of twenty (20), dies, graduates from high school, marries, is emancipated, or joins the military, whichever event occurs first. The non-custodial parent will be required to pay a reasonable amount of child support to the custodial parent towards the child's living expenses. Child support, in addition to a monthly or weekly sum, may also include such items as health insurance and payment of medical and dental expenses.

Child Support Guidelines went into effect on July 1, 1989. These guidelines establish an amount of child support as a percentage range of gross income of the non-custodial parent, based upon

the number of children. For one child the percentage range is 17-23% of the gross income of the non-custodial parent; for two children, 23-28%; for three children, 25-32%; for four children, 29-35%; and for five or more children, 31-37%. The Court can deviate from the guidelines in allocating child support based on factors including the ages of the children, day care costs, education costs, amount of debt and obligations to another household.

18. May I receive money for the children's college?

The Court cannot order parents to pay for college. However, parents may agree to pay child support beyond the age of 18 or to pay for college expenses.

19. What is alimony?

Alimony is payment by one spouse to the other for the other's support and maintenance. The court may grant alimony to either the husband or the wife. Alimony may be for a limited period of time or until the spouse receiving alimony dies or remarries. Alimony can be paid in one payment of money or property, or it may be paid over a period of time.

20. What happens to "our" possessions in a divorce?

One of the most difficult and complex areas of divorce is the division of marital property. Marital property is all property acquired during the marriage, except for that property received by gift from a third party or by inheritance. Each spouse is entitled to an equitable share of all property acquired during the marriage. The Judge or jury will decide on the division of marital property. Marital property will be divided equitably (not necessarily equally) between the parties regardless of how the title to the property is held. There is no set formula or percentage amount used to divide marital property.

21. How will the Court Order be enforced?

The Court Order can be enforced by garnishment or a contempt action. A contempt action is filed in the same Court that issued the divorce. In addition, support orders can be enforced through the District Attorney's office if the nonpaying spouse resides out of town.

22. If my spouse and I agree on all matters pertaining to getting a divorce, do we still need a lawyer?

A lawyer will ensure that all matters that should be resolved in a divorce are resolved. Acting without a lawyer could end up being a costly mistake both to the parties and to their children.

23. What do I do if I am the victim of family violence?

Georgia has a law protecting victims of family violence. The parties do not have to be married in order for a victim to ask the Court for relief. However, the parties have to reside in the same household. A victim of family violence can file a Petition with the Superior Court that family violence has occurred in the past and may occur in the future. The Court can issue a temporary order granting a variety of remedies, including eviction of the offending party from the residence or providing suitable alternate housing for the victim and children, as well as financial relief. Within ten (10) days, a trial is held at which time the Judge determines if a Family Violence Order is appropriate. A Family Violence Order expires after six months.

The victim does not need a lawyer to file a Family Violence Petition. The Clerk of the Superior Court in the victim's residing county may provide forms for the Petition or be able to direct a victim to a family violence shelter or social service agency for direction.